

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X

TYRONE FELDER,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

-----X

:

:

:

:

:

:

:

:

:

20-CV-7531 (VEC)

S2 14-CR-546 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS on August 10, 2021, this Court issued an order denying Petitioner’s motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence, Dkt. 8 (the “Order”);

WHEREAS on October 26, 2021, Petitioner filed a motion for the Court to reconsider and amend its Order pursuant to Fed. R. Civ. P. 52(b) and 59(e), Dkt. 9 (the “Motion”);

WHEREAS on September 2, 2022, the U.S. Court of Appeals for the Second Circuit ordered the Court to construe the Motion as a notice of appeal and as a Fed. R. App. P. 4(a)(5) motion to extend the time to appeal the Order, Dkt. 17;

WHEREAS the deadline for notice of appeal was October 11, 2021, *see* Fed. R. App. P. 4(a)(1)(B)(i);

WHEREAS on September 8, 2022, the Court ordered Petitioner to provide a written explanation to the Court by not later than October 8, 2022, for why he failed to meet the October 11, 2021 deadline, Dkt. 18;

WHEREAS on September 27, 2022,¹ Petitioner filed a written explanation to the Court, Dkt. 19;

¹ Petitioner’s submission is dated September 22, 2022, and was received on September 27, 2022. Petitioner’s submission envelope does not include a mailing date.

WHEREAS the Court “may extend the time to file a notice of appeal” if the party seeking an extension “so moves no later than 30 days” after the deadline expired and if the party “shows excludable neglect or good cause,” Fed. R. App. P. 4(a)(5)(A);

WHEREAS Petitioner’s Motion was filed not later than 30 days after the deadline expired; and

WHEREAS Petitioner’s explanation that his notice of appeal was collected by a prison staff member late due to a COVID-19 lockdown in Petitioner’s unit constitutes “good cause,” *see Jaimes v. Kaplan*, 21-CV-6523 (LTS), 2021 WL 5920236, at *1 n.2 (S.D.N.Y. Dec. 14, 2021) (noting that a “crisis at Rikers Island due to the Covid-19 pandemic [which] prevented [plaintiff’s] application from being mailed out” would “provide good cause to extend the time to appeal”);


IT IS HEREBY ORDERED that in accordance with the Second Circuit’s mandate, Petitioner’s motion to extend the time to appeal is GRANTED and that no further notice of appeal is required from Petitioner.

IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to notify the Clerk of the Second Circuit of this Order.

IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to mail copies of this order and Dkts. 8 and 10 to Petitioner.

SO ORDERED.

Date: September 28, 2022
New York, NY



VALERIE CAPRONI
United States District Judge